

COPY

GERALD A. GAGLIARDI

Page 1

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF DELAWARE

3  
4 In re: : CHAPTER 11  
INACOM CORP., et al., : BANKRUPTCY CASE  
Debtors : NO. 00-2426 (PJW)

5  
6 INACOM CORP., et al. : CIVIL ACTION  
-vs- :  
TECH DATA CORPORATION : NO. 04-CV-148 (GMS)

7  
8 INACOM CORP., et al. : CIVIL ACTION  
-vs- :  
DELL COMPUTER CORP. : NO. 04-CV-582 (GMS)

9  
10 INACOM CORP., et al. : CIVIL ACTION  
-vs- :  
LEXMARK INTERNATIONAL, INC. : NO. 04-CV-583 (GMS)

11  
12 INACOM CORP., et al. : CIVIL ACTION  
-vs- :  
RESILIEN, INC. : NO. 04-CV-584 (GMS)

13  
14 INACOM CORP., et al. : CIVIL ACTION  
-vs- :  
INGRAM ENTERTAINMENT, INC. : NO. 04-CV-593 (GMS)

15  
16  
17 Oral deposition of GERALD A. GAGLIARDI,  
18 was taken pursuant to notice, held at BLANK ROME,  
19 LLP, One Logan Square, 18th & Cherry Streets,  
Philadelphia, Pennsylvania, commencing at 9:33 a.m.  
on April 6, 2005, before April J. Foga, Certified  
Shorthand Reporter and Notary Public, there being  
present:

20  
21  
22 ZANARAS REPORTING AND VIDEO  
REGISTERED PROFESSIONAL REPORTERS  
23 1616 Walnut St., Ste. 300 2112 Bay Avenue  
Philadelphia, PA 19103 Ocean City, NJ 08226  
24 (215) 790-7857 1-877-GO-DEPOS

DISK  
ENCLOSED

GERALD A. GAGLIARDI

Page 2

1 A P P E A R A N C E S:

2  
3 PACHULSKI, STANG, ZIEHL, YOUNG,  
JONES & WEINTRAUB  
4 BY: ANDREW W. CAINE, ESQUIRE  
10100 Santa Monica Boulevard, 11th Floor  
5 Los Angeles, California 900067  
(310) 277-6910  
6 Counsel for Plaintiff, Inacom, Corp.

7  
8 BLANK ROME, LLP  
BY: EARL M. FORTE, ESQUIRE  
One Logan Square  
9 18th & Cherry Street  
Philadelphia, PA 19103  
10 (215) 569-5618  
Counsel for Executive Sounding Board Associates,  
11 Inc., liquidating agent for Inacom Corp. and  
affiliated debtors  
12

13 ADORNO & YOSS, LLP  
BY: STEPHEN C. HUNT, ESQUIRE  
14 350 East Las Olas Boulevard, Suite 1700  
Fort Lauderdale, FL 33301  
15 (954) 763-1200  
Counsel for Defendant Tech Data Corporation  
16

17 HUGHES, LUCE, LLP  
BY: SABRINA L. STREUSAND, ESQUIRE  
18 111 Congress Avenue, Suite 900  
Austin, Texas 78701  
19 (512) 482-6842  
Counsel for Defendant, Dell, Inc.  
20

21 (Appearance Page continued on Page 3.)  
22  
23  
24

GERALD A. GAGLIARDI

Page 3

A P P E A R A N C E S:

ZUCKERMAN, SPAEDER, LLP  
BY: THOMAS G. MACAULEY, ESQUIRE  
919 Market Street, Suite 990  
Wilmington, DE 19899  
(302) 427-0400  
Counsel for Defendant, Ingram Entertainment,  
Inc.

MORRIS, NICHOLS, ARSHT & TUNNELL  
BY: DEREK C. ABBOTT, ESQUIRE  
1201 North Market Street  
Wilmington, DE 19899  
(302) 575-7357  
Counsel for Defendant, Hewlett-Packard Company

- - -

1       damaging. The fact that at the 99th hour when  
2       we were trying to sell the assets to Compucom  
3       and had a deal and Safeguard Scientific said  
4       they couldn't allow the transaction to happen  
5       because it was going to affect their tax  
6       position. Compucom was happy with the  
7       transaction and the fact that there were no  
8       financials. Safeguard Scientific wouldn't let  
9       us honor the contract or wouldn't let them do  
10      the contract. Otherwise, we could have  
11      packaged the thing and we could have saved the  
12      5,000 jobs that got taken and none of us would  
13      have ever met each other.

14               So I can give you a whole host -- I  
15      called it a cesspool a while ago. It was the  
16      worst situation I have ever seen in my 30 some  
17      odd years of corporate experience. I've  
18      worked in an environment at Unysis where we  
19      actually had prepared for bankruptcy some  
20      years ago. This was a completely different  
21      situation. This was misinformation,  
22      misrepresentation, people not carrying out  
23      things they said they were going to do for us.  
24      It was nothing -- the worst mess I've seen in

1 certain law facilities were actually paid off and  
2 closed as a result of monies received from the Compaq  
3 closing?

4 A. I believe so.

5 Q. Do you recall sitting here today which  
6 ones would have been satisfied?

7 A. I recall that there was one with IBM  
8 and I don't recall the others. I know that bank one  
9 was redone. Those are the ones -- I can remember the  
10 IBM one because it was a sticky thing at the very end  
11 of it. We couldn't find the person to sign the  
12 document, so they had to agree before we could close  
13 and then they would then get their money shot off to  
14 them, so --

15 Q. It sounds to me, Mr. Gagliardi, from  
16 the way you described it that the Compucom sale had  
17 proceeded fairly well along; is that correct?

18 A. Yes.

19 Q. Do you know what remained to be done in  
20 order to close that?

21 A. There was a list of -- as we went down  
22 through the period, there was a list of things that  
23 had to get done in terms of which employees, which  
24 services, which this, which -- you know, commitments

GERALD A. GAGLIARDI

Page 107

1 amongst everyone, the banks, Compucom, ourselves.  
2 And we had pretty much ticked our way through all of  
3 them. I can't recall which ones in particular needed  
4 to be finished, but we were on a path to close the  
5 deal and were actively working to get it done by a  
6 certain day in that week, the week that we ended up  
7 closing the doors. And there had been an open issue  
8 about this getting financial statements which we did  
9 not believe -- it was listed, but it wasn't listed on  
10 the critical path and all of a sudden it appeared out  
11 of nowhere to be on the critical path. Safeguard  
12 Scientific raised their head and then Tom -- the two  
13 Toms dove into that one and we were unable to resolve  
14 it.

15 Q. Actually, I should jump in,  
16 Mr. Gagliardi, because on a couple of occasions, you  
17 referred to two Toms and I just want to make sure --

18 A. Tom Molchen and Tom Fitzpatrick.

19 Q. Thank you, sir. And your reference to  
20 two Toms in the deposition would always be to those  
21 gentlemen?

22 A. Yes. That's what they were constantly  
23 referred to.

24 Q. Thank you. Mr. Gagliardi, do you

GERALD A. GAGLIARDI

Page 108

1 recall Mr. Fitzpatrick reporting to the board at the  
2 May 1, 2000 meeting that the company was still  
3 showing positive EBITDA?

4 A. No. I don't recall that.

5 Q. Did you have an expectation for the  
6 revenue projections that would have been derived from  
7 the cash generated through the Compucom closing if it  
8 had actually taken place?

9 MR. CAINE: Can you read that back?

10 (The court reporter read back the  
11 pertinent testimony.)

12 MR. CAINE: Two objections as to form  
13 and no foundation.

14 THE WITNESS: I don't understand the  
15 question.

16 BY MR. HUNT:

17 Q. Mr. Gagliardi, I previously shared with  
18 you a letter from the Houlihan, Lokey firm that was  
19 marked as an exhibit. That was exhibit GAG-3. Do  
20 you have any additional recollection regarding the  
21 substance of this solvency opinion letter?

22 A. No.

23 Q. Do you believe that Inacom, at the time  
24 of the actual closing with Compaq, had identified to

1 BY MS. STREUSAND:

2 Q. Do you know what financial information  
3 was provided to Compucom?

4 A. I know financial data was provided to  
5 Compucom by Mr. Fitzpatrick --

6 Q. And --

7 A. -- and Laz.

8 Q. And do you know what type? Was it --

9 A. No. I didn't participate in those  
10 meetings. They had -- there were meetings I went to  
11 and there were a set of meetings between just the  
12 financial folks, Tom and a woman who was the CFO at  
13 that time of Compucom.

14 Q. Would balance sheets have been provided  
15 to Compucom?

16 A. I don't know.

17 Q. Did you review the Houlihan, Lokey  
18 solvency opinion of February 16, 2000 before the  
19 close of the transaction with Compaq?

20 MR. CAINE: Objection. Asked and  
21 answered.

22 THE WITNESS: I did not.

23 BY MS. STREUSAND:

24 Q. And did you work with anyone at



1           A.     In the spring. Before that, I thought  
2 we -- maybe we could get this thing -- maybe they  
3 were actually going to do it, but when they began  
4 bouncing us from Kansas City to the partners in New  
5 York and we couldn't get straight answers, and we  
6 actually had one come to the board meeting to tell us  
7 what was going to happen and he wouldn't give the  
8 board straight answers, I began to believe that there  
9 was just no end to this thing.

10           Q.     Do you recall when you first started  
11 talking to anyone about a potential sale of the  
12 service business?

13           A.     Yes.

14           Q.     When was that?

15           A.     Right after the close -- right after  
16 the transaction with Compaq was announced, a guy  
17 named Pete Musser, who was with a company named  
18 Safeguard Scientific called me. He was an  
19 acquaintance I had had before and he -- Safeguard  
20 Scientific was a principal owner in a thing call  
21 Compucom and so he called me and said, Gerry, how  
22 come you didn't give me a heads up you were thinking  
23 about selling anything. If you guys are thinking of  
24 divesting yourself of any more of those assets, we

1 month and week after week. And the way we kept it  
2 going week after week was the seriousness of the  
3 negotiations with Compucom.

4 Q. At some point, was a deal in principal  
5 reach with Compucom?

6 A. Yes.

7 Q. What was the purpose for Inacom's  
8 perspective of entering into that deal?

9 A. Really to save the jobs of the 5,000  
10 people that were going to get terminated. There was  
11 nothing in it for us.

12 Q. When you say there was nothing in it  
13 for Inacom, what do you mean?

14 A. Well, Inacom would be in a position to  
15 satisfy -- take care of its employees. Clearly the  
16 stockholders were going to be left high and dry and  
17 there would have been more cash to pay creditors, so  
18 from a fiduciary position, we thought that it was  
19 best serving our constituency than just folding the  
20 place up.

21 Q. Was there cash coming to Inacom from  
22 Compucom?

23 A. Yes. Yeah. There was some cash. I  
24 don't recall the amount, but again, that would have